

STATUTE OF LIMITATIONS ON CIVIL COPYRIGHT ACTIONS

JUNE 22, 1956—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. R. 781]

The Committee on the Judiciary, to whom was referred the bill (H. R. 781) to amend title 17 of the United States Code entitled "Copyrights" to provide for a statute of limitations with respect to civil actions, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 5, strike out "115. (a) Limitation of Criminal proceedings.—", and insert in lieu thereof:

§ 115. Limitations.

(a) Criminal Proceedings.

Page 1, line 9, strike out "(b) Limitation of Civil Actions.—", and insert in lieu thereof:

"(b) Civil actions."

Page 2, add a new section as follows:

SEC. 3. The chapter analysis of Chapter 2 of Title 17 preceding section 101 is amended by striking out "115. Limitation of criminal proceedings" and inserting "115. Limitations."

EXPLANATION OF AMENDMENTS

The amendments are of a technical nature only, and were made in order to conform the language and catch line of the bill to title 17 of the United States Code entitled "Copyrights," one of the code titles which has been enacted into positive law.

PURPOSE

The purpose of this bill is to provide a statute of limitations with respect to civil actions relating to copyrights.

STATEMENT

Section 115 of title 17 of the United States Code provides a 3-year period of limitation on the commencement of criminal proceedings for violation of the copyright law. However, it provides no specific period of time within which civil actions must be instituted. As a result, civil actions for the infringement of copyrights are limited by the law of the State where the action is brought.

In view of this present lack of limitation in connection with civil copyright actions, Federal courts apply State statutes of limitations in copyright proceedings. These statutes vary from 1 to 6 years, and tend to encourage the practice of "forum shopping." Furthermore, since no State statute specifically deals with copyright limitation, Federal courts have the difficult task of ascertaining the specific State statute of limitations which governs. Thus in any particular State any one of the various limitations governing tort actions, conversions, injuries to personal rights, injuries to property rights, liabilities not arising from contract, or from a "catchall" classification, may ultimately be considered by the court in determining which statute governs a copyright action. The proposed bill would eliminate this difficulty, and in addition would provide a uniform 3-year period throughout the United States.

At the hearings it was pointed out that existing State statutes of limitations generally provide for a suspension of the limitation period in certain instances such as the absence of the defendant from the jurisdiction, the legal incapacity of either party, the death of either party, or during such time as the cause of action is fraudulently concealed by the person liable for the infringement, and such fact is unknown to the person who is injured. It was therefore suggested that the bill be amended so as to provide for the tolling of the statute of limitation during such time as any one of the above-enumerated instances existed.

The committee, however, decided not to incorporate these suggestions into the bill for the reason that the Federal district courts, generally, would recognize these equitable defenses anyway. In this connection, the committee wishes to emphasize that it is its intention in approving this legislation that the statute of limitations is to extend to the remedy of the person affected thereby, and not to his substantive rights.

It may be well to point out that statutes of limitations take the form of a limitation upon the substantive right or upon the remedy. Under the former, the right of action is extinguished at the end of the period and the courts usually have no jurisdiction with regard to actions that are not instituted within the appropriate period. In addition, the courts generally do not permit the intervention of equitable defenses, or estoppel where there is a limitation on the right.

Under the remedial type of statute, the basic right is not extinguished, but the limitation is applied merely to the remedy. In some instances the right itself can be enforced collaterally, as in the case of a mortgage foreclosure subsequent to the expiration of a statutory

limitation period for payment of a debt. Equitable considerations are available to prolong the time for bringing suit in such cases where there exist the disabilities or insanity of infancy, absence of the defendant from the jurisdiction, fraudulent concealment, etc.

As far as this committee has been able to ascertain, all State statutes of limitation, which now govern the Federal courts in copyright actions, are limitations upon the remedy, and the present bill has been drawn to apply this concept to a uniform Federal period of limitations. The committee has not been unmindful that the 6-year statute of limitations in the Patent Code (35 U. S. C. 286) is a limitation upon the substantive right rather than upon the remedy. However, the relatively longer period of limitation provided therein compensates for the difference in concept. Moreover, it was considered that the long-standing fact that both the copyright bar and the courts have become accustomed to a limitation based upon the remedy, warranted a continuation of this concept in the present bill.

Section 2 of the bill provides that this legislation shall take effect 1 year after date of its enactment. It is intended to apply not only prospectively to claims after the effective date, but retrospectively to claims accruing prior thereto, whether or not barred on the effective date by previously existing law in the State of the Federal forum where the action is brought. The purpose of postponing the effective date is to permit those who may have claims in Federal forums sitting in States where the period would be cut down to 3 years, a 1-year period following enactment in which to take appropriate action to protect their rights.

Reports from the Library of Congress and the Department of Justice on this legislation follow:

THE LIBRARIAN OF CONGRESS,
Washington 25, D. C., July 11, 1955.

HON. EMANUEL CELLER,
United States House of Representatives,
347 House Office Building, Washington, D. C.

DEAR MR. CELLER: This will acknowledge your letter of June 30, 1955, and the enclosed copy of H. R. 781, a bill to amend title 17, United States Code, entitled "Copyrights" to provide for a statute of limitations with respect to civil actions, and requesting my views thereon.

Although the present copyright law contains a provision with respect to the limitation of criminal proceedings, it is silent as regards the limitation of civil actions. The proposed bill will remedy this deficiency by providing for a 3-year statute of limitations in civil actions.

The proposed addition to the present law would seem to be appropriate. In view of the present lack of a limitation in connection with copyright actions, the Federal courts apply State statutes of limitations in copyright proceedings. These vary from 1 to 6 years. This variation tends to encourage the practice of "forum shopping." In addition to this lack of uniformity as regards the time limitation, frequent difficulty is experienced in ascertaining the pertinent period of limitation in a given jurisdiction due to the absence of a specific copyright limitation. Thus, on any particular State, any one of the various limitations governing tort actions, conversions, injuries to personal rights, injuries to property rights, liabilities not arising from

contract, or from a "catchall" classification, may ultimately be considered by the court to govern a copyright action. The proposed bill would eliminate the difficulty of ascertainment of time limitation and would provide a uniform period throughout the United States.

The existing State statutes of limitation generally provide for a suspension of the running of the limitation period in certain instances such as the absence of the defendant from the jurisdiction, the legal incapacity of either party, or the death of either party. The substitution of a uniform Federal statute of limitations in copyright actions for the present State statutes may create some future doubt regarding the suspension of the limitation in such instances. In order to eliminate any such doubt, it is recommended that section 115 (b) of H. R. 781 be amended to read as follows:

"(b) **Limitation of civil actions.**—No civil action shall be maintained under the provisions of this title unless the same is commenced within three years after the claim accrued, *Provided, That the running of the said period shall be suspended during such time as institution of the action is precluded by the absence of the defendant from the United States, or during such time as the person entitled to the cause of action is under legal disability, or during the interval, not to exceed six months, between the death of either party and the appointment of an executor or administrator.*" [New matter italics.]

It should be mentioned that the Register of Copyrights has discussed this legislation with various members of the copyright bar. The adoption of H. R. 781 with the additional provisos suggested above has been approved by the copyright committee of the Bar Association of the city of New York and the committee on copyright law revision of the American Bar Association. It should be mentioned that there has also been some sentiment for the inclusion in the proviso of an additional ground for suspension, namely that of fraudulent concealment. A majority of the copyright committee of the Bar Association of the city of New York are of the opinion that the fraudulent concealment item should be included. On the contrary, a majority of the committee on copyright law revision of the American Bar Association consider it unnecessary or unwise to include the fraudulent concealment provision. It is the opinion of the Register of Copyrights, which I share, that the nature of copyright infringement is such as to render it unlikely that many cases would arise where fraudulent concealment would be a material problem. Therefore, I have not suggested that it be included in the amendment to H. R. 781. However, if your committee is of the opinion that such a provision should be included, we will interpose no objection thereto.

It is noted that the language of H. R. 781 indicates that the limitation is one which conditions the remedy and not the substantive right. It is believed that the nature of copyright infringement, together with the relatively short period of limitation proposed in the bill, warrants the conclusion that a limitation on the remedy is appropriate. It has been stated that as a general rule "when a statute creating a new cause of action contains in itself a statute of limitations, the limitation imposed becomes an integral part of the right of action created by statute * * *". (*Penna. Company v. Deckert et al.*, 123 F. (2d) 979, 985 (Third Cir. 1941).) Most statutory causes of action are not entirely new, however, and have some relationship to causes of action formerly existing at common law. If the statutory action

combines both new and old elements, the decision turns upon the intent of Congress, as expressed in the wording of the limitation, its legislative history, and the general purpose of the statute (*Midstate Horticultural Co., v. Pennsylvania Railroad*, 320 U. S. 356, 360 (1943)). Thus each new Federal limitation must generally be tested in the courts in order to determine whether it is substantive or remedial. In order to obviate a possible interpretation that the proposed legislation is a limitation on the right, it is, therefore, recommended that, if the present bill is reported out of committee, the committee report contain a statement which would indicate that it is the intent of the Congress that the amendment constitutes a limitation on the remedy only and not upon the right.

Sincerely yours,

L. QUINCY MUMFORD,
Librarian of Congress.

FEBRUARY 17, 1956.

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (H. R. 781) to amend title 17 of the United States Code entitled "Copyrights" to provide for a statute of limitations with respect to civil actions.

Section 115 of title 17, United States Code, provides a 3-year period of limitation on the commencement of criminal proceedings for violation of the copyright code. However, the code provides no specific period of time within which civil actions must be instituted. As a result, civil actions for the infringement of copyrights are limited by the law of the State where the action is brought.

The bill would amend section 115 of title 17 United States Code by providing that no civil action shall be maintained under the provisions of the title unless commenced within 3 years after the claim accrued. The amendment would take effect 1 year after date of enactment and apply to all actions commenced on or after such effective date.

The Department of Justice would have no objection to the enactment of the bill.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed, with matter proposed to be stricken out enclosed in black brackets, and new matter proposed to be added shown in italics:

Title 17 U. S. Code

§ 115. *Limitations.*

【§ 115. (a) Limitation of criminal proceedings.—】 (a) *Criminal proceedings.*—No criminal proceeding shall be maintained under the provisions of this title unless the same is commenced within three years after the cause of action arose.

【(b) Limitations of civil actions.—】 (b) *Civil actions.*—No civil action shall be maintained under the provisions of this title unless the same is commenced within three years after the claim accrued.

CHAPTER ANALYSIS

(Title 17 U. S. Code, Chapter 2)

SEC.

* * * * *

【115. Limitation of criminal proceedings】

115. Limitations.

* * * * *

○